

Formal Objection - Summary

Cannabis for Private Purposes Regulations

FORMAL OBJECTION - Maximum opposition. We allege constitutional invalidity on two concurrent grounds: (1) the enabling Act is incorrectly tagged as a section 75 bill when it is a section 76 matter, rendering the Regulations ultra vires from inception; and (2) independently, the Regulations re-criminalise conduct the Constitutional Court protected in Prince [2018] ZACC 30 and fail the section 36 proportionality test. We request the opportunity to make oral representations.

OUR 8 MINIMUM REQUIREMENTS

- 1 Evidence-based limits or none.** Any possession, cultivation or transport limit must cite published scientific evidence and survive s36 scrutiny. The current 750g and 5-plant thresholds have no evidential foundation whatsoever.
- 2 Whole-plant definition.** The definition of cannabis must include leaves, stalks, seeds and branches - not only flowering tops. The current definition creates prosecution loopholes and excludes industrial and traditional uses protected under Prince.
- 3 Legal acquisition pathway.** Adults who cannot cultivate must be able to lawfully obtain cannabis. Criminalising all acquisition by non-cultivators makes the privacy right available only to those with land - a clear s9 equality violation.
- 4 Traditional and rural growers included.** A transitional pathway must be created for existing traditional cannabis farmers in the Eastern Cape, KwaZulu-Natal and Limpopo. This is the single most pro-poor intervention available and it costs nothing to legislate.
- 5 Binding SAPS guidelines.** Concrete operational instructions must circumscribe police discretion in cannabis enforcement. The failure to do this is the most enduring wound of the Prince judgment - uncircumscribed discretion remains the daily reality for millions.
- 6 Accessible expungement.** The process must be digitised, mobile-accessible, legally aided for indigent applicants and must cover all cannabis convictions including those based on dealing presumptions. A paper-based, Pretoria-centric system fails those most harmed by prohibition.
- 7 Commercialisation bill by June 2026.** The Cannabis and Hemp Phakisa Action Lab (June 2023) committed to a comprehensive commercialisation bill by June 2026. These Regulations must be framed as interim measures pending that legislation - not as a permanent framework.
- 8 90-day comment period with provincial hearings.** A 31-day window issued during school holidays is constitutionally inadequate for a polycentric framework affecting millions. Minimum 90 days with public hearings in all nine provinces is required.

WHY WE SAY THE ACT AND REGULATIONS ARE INVALID

1. Wrong legislative tag (fatal ground). The Bill was tagged as a section 75 ordinary bill, but the pith and substance test (Tongoane [2010] ZACC 10, para 72) confirms it required section 76. It directly engages Schedule 4A concurrent competences - indigenous law and custom, environment, and police services - and imposes provincial fiscal burdens without provincial input. Incorrect tagging renders legislation unconstitutional in its entirety. The Regulations fall with it.

2. Arbitrary and un evidenced restrictions. The 750g possession limit and 5-plant cultivation limit have no scientific or law enforcement basis. A self-sufficient home cultivator following both limits could immediately find themselves in criminal jeopardy from their own legal harvest. The Prince judgment requires any limits to be reasonable, proportionate and evidence-based. These are not.

3. Structural discrimination. A framework that permits only private cultivation gives rights exclusively to those with land, capital and private outdoor space - predominantly urban middle class South Africans. Those living in flats, backyard rooms and informal settlements - the urban poor - have no access to legal cannabis whatsoever. This violates section 9 of the Constitution.

THE ECONOMIC COST OF INACTION

~40,000

Hectares cultivated
Pondoland alone (Grooten, 2023)

60-179t

FECO + stalk per year
60-179t FECO + 7.7t stalk/household

R6bn+

Minimum retail value
Based on avg gram price of R100
(Grooten, 2023)

Europe cultivates approximately 38,000 hectares of hemp. Pondoland alone has more traditional cannabis growing right now - legally, in private, by virtue of the Prince judgment - than Europe's entire hemp industry. Grooten's 2023 Wageningen University master's thesis, the first study to quantify production in Mpondoland, found that each ancestral farming household harvests an average of 74.8 kg of cannabis flower annually from approximately one hectare. These farmers earn nothing legally from a resource they have cultivated for generations. These Regulations change nothing for them.

The economic case extends beyond extract. Grooten's field measurements found each household also harvests an average of 7.7 tons of cannabis stalk annually, yielding approximately 5.4 tons of clean hurd - with direct applications in construction, textiles, animal bedding and biofuel. Yet these farmers cannot access the industrial hemp framework either: SA landraces test at 5-10% THC against a 0.2% threshold. They are excluded from both frameworks simultaneously. This double exclusion engages section 22 (freedom of trade) and section 25 (property rights) in addition to the equality violations already identified. The state has provided no justification for it.

Parliament was warned - repeatedly. The CDCSA raised the tagging defect in writing on 8 October 2020. AFCLG reiterated it in our April 2023 Parliamentary submission. The Phakisa Report (June 2023) committed to inclusivity, whole-plant regulation and a commercialisation bill by June 2026. Every one of these commitments is absent from the Regulations before us. Civil society has exhausted every legitimate avenue of engagement. We now place the constitutional consequences squarely on the record.